NORTHWEST PIPELINE CORP.

IBLA 83-667 Decided September 4, 1986

Appeal from a decision of the Grand Junction District Manager, Bureau of Land Management, Grand Junction, Colorado, requiring payment of rental for communication site right-of-way C-36734.

Affirmed.

1. Appraisals -- Rights-of-Way: Generally -- Rights-of-Way: Act of February 25, 1920

An appraisal of a right-of-way for a "related facility" communications site, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1982), will be upheld on appeal if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

APPEARANCES: James M. Day, Esq., Washington, D.C., for Northwest Pipeline Corporation; Marla Mansfield, Esq., Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Northwest Pipeline Corporation (Northwest) has appealed from the February 16, 1983, decision of the Grand Junction District Manager, Bureau of Land Management (BLM), Grand Junction, Colorado, requiring annual rental of $200 for communication site right-of-way C-36734. 1/

By application dated January 21, 1983, Northwest requested a right-of-way in order to install a mobile repeater staton at an existing facility

1/ This case, among others, was originally disposed of by Order of Oct. 30, 1984, pursuant to this Board's decision in Northwest Pipeline Corporation (On Reconsideration), 83 IBLA 204 (1984). Subsequently, counsel for BLM filed a motion to amend the Order, for the reason that unlike the other cases which involved linear pipeline rights-of-way, this case involved a communications site. By Order of Feb. 24, 1986, the Board granted that motion, effectively reinstating this appeal.

which was being used by other companies for similar radio equipment. By its decision dated February 16, 1983, BLM granted appellant's request for a right-of-way and determined that $200 would be the fair market rental value for use of the site. Appellant's mobile repeater was to be placed in a building constructed by Horizon Communications whose right-of-way, C-33989, consisting of 1 acre in lot 3, sec. 22, T. 12 S. R. 103 W., sixth principal Meridian, had been granted pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976). Appellant's right-of-way grant was issued for a term of 30 years pursuant to section 28 of the Mineral Leasing Act (MLA) of February 25, 1920, as amended, 30 U.S.C. § 185 (1982), and 43 CFR Part 2880.

Section 28 of the Act of February 25, 1920, as amended, provides, in pertinent part, that "the holder of a right-of-way * * * shall pay annually in advance the fair market rental value of the right-of-way * * * as determined by the Secretary * * *." 30 U.S.C. § 185(1) (1982).

On March 31, 1983, BLM prepared an appraisal report valuing the right-of-way grant. The rights appraised included the right to "[i]nstall, maintain and operate communication equipment within the boundaries of communication site lease granted to Horizon Communications C-33989 with right of ingress and egress." In considering appellant's right-of-way grant for "space lease" C-36734, the appraiser, employing the comparable lease method, compared appellant's grant with three others and drew the following conclusions:

> Estimated annual fair market rental for the subject space communication lease is $200.00 for a five year period. This is based on the lessor of the site (Bureau of Land Management) receiving 1/3 of the $600.00 base annual rent. This is supported by information sheets on communication sites No. 4-W, C-21 and 6-C. Lease No. 4-W is near Laramie, Wyoming. The lessor receives 1/4 of the base lease of $1,680.00. Lease No. C-21 is 17 miles east of Grand Junction, Colorado. The lessor of the site receives 1/2 of the annual gross income from sub-leases or space leases. A space lease on this site rents for $75.00 per month or $900.00 annually. Lease No. 6-C is 18 miles north of Meeker, Colorado. The lessor receives 1/2 of the income from sub-leases on this site. Annual rent for a sub-lease on the site is $600.00.

In its statement of reasons on appeal, Northwest argues that the fair market rental of $200 established by the February 16, 1983, BLM decision is arbitrary, capricious, an abuse of discretion, and contrary to law. As proof of its contention, appellant points out that the appraisal was completed on March 28, and approved on March 31, 1983, 6 weeks after the BLM decision determining the $200 rental. Appellant contends the appraisal is incomplete in that it does not take into consideration the "built-in inferiority of a BLM grant compared to a private lease" (Appellant's Supplemental Argument at 1). Further, appellant asserts the rental of $200 is excessive and that BLM is without authority to charge an annual rental to a sublessee under the

MLA. Finally, appellant contends the BLM's charges for processing fees and monitoring fees are improper and excessive.

[1] The general standard for reviewing rights-of-way appraisals is to uphold the appraisal if there is no error in the appraisal methods used by BLM or the appellant fails to show by convincing evidence that the charges are excessive. Western Slope Gas Co., 61 IBLA 57 (1981); Northwestern Colorado Broadcasting Co., 49 IBLA 23 (1980); Full Circle Inc., 35 IBLA 325, 85 I.D. 207 (1978). Generally, in the absence of compelling evidence that a BLM appraisal is erroneous such an appraisal may be rebutted only by another appraisal or appraisals. Western Slope Gas Co., supra at 61; Dwight L. Zundal, 55 IBLA 218 (1981); James W. Smith, 46 IBLA 233 (1980).

Appellant complains that because the appraisal was completed after the decision establishing the fair market rental was rendered the decision is per se arbitrary, capricious, and an abuse of discretion. Appellant follows this with a charge that the rental of $200 is excessive. However, appellant has shown no specific error in the BLM appraisal nor has it presented evidence that the rental charge for the space site is excessive. 2/ Appellant also contends that BLM is without authority to charge an annual rental to a sublessee under the MLA. The applicable regulation, 43 CFR 2881.1-3(c), however, reserves to the United States the right to make, issue, or grant right-of-way grants, temporary use permits, easements, leases, licenses, contracts, patents, permits and other authorizations to or with third parties for compatible uses on, under, above, or adjacent to the Federal lands subject to a right-of-way grant or temporary use permit. See 43 CFR 2801.1-1. As set out above, the applicable statute, 30 U.S.C. § 185 (1) (1982), provides that each applicant for a right-of-way (which appellant is) "shall pay annually in advance the fair market value." Appellant's contention is without merit.

The comparable lease method of appraisal, used by BLM in this case to determine the fair market value, is the preferred method for appraising the fair market value of communication sites where there is sufficient comparable rental data. See Southern California Gas Co., 81 IBLA 358 (1984); Mountain States Telephone & Telegraph Co., 79 IBLA 5 (1984). The BLM appraiser considered subleases in the vicinity of appellant's right-of-way. After consideration of the differences and similarities between those leases and appellant's right-of-way, the fair market annual rental value for appellant's right-of-way was determined. Appellant has shown no error in the appraisal methods used by BLM, nor has it provided another appraisal or any evidence

2/ Appellant also asserts that "BLM bears the burden of proving the fair market value." Appellant is simply wrong. Decisions of BLM on appeal to this Board are presumed to be correct and an appellant has the burden of showing otherwise. See, e.g., In re Pacific Coast Molybdenum, 75 IBLA 16, 22, 90 I.D. 352, 356 (1983).

that the charges are excessive, particularly in light of the rental rates for other leases in the area. 3/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

3/ Moreover, appellant is paying the Government lessee of the site, Starner Drilling Company, $900 annually for use of part of the building and tower constructed thereon. Additionally under the agreement between Starner and appellant either party may terminate the agreement upon 90 days written notice. Appellant has simply failed to show either that the Government's charge of $200 annually for the use of its land is excessive or that the 30-year Government grant is in any way inferior to those granted by private parties.